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December 14, 2010

AGENDA ITEM 3b

TO: MEMBERS OF THE BENEFITS AND PROGRAM ADMINISTRATION COMMITTEE

I. SUBJECT: State Legislative Proposal: Minor Policy and Technical Amendments to the Public Employees Retirement Law (PERL)

II. PROGRAM: Legislation

III. RECOMMENDATION: Staff recommends that the Board **sponsor** legislation to make the following minor policy and technical amendments to sections of the Government Code administered by CalPERS.

IV. ANALYSIS:

This proposal would make several changes to various provisions of the PERL identified by staff as necessary for the maintenance and good governance of CalPERS and to ensure that its statutes are clear.

Specifically, this proposal would address the following issues:

Strengthening and Clarifying Rules Regarding Post-Retirement Employment

CalPERS employers may hire retired annuitants for a number of reasons. Under certain situations, a retired annuitant must possess specialized skills that are needed for a limited time or during an emergency to prevent a stoppage of public services. Existing law limits these appointments to 960 hours of service in a given fiscal year and requires the total compensation for these appointments not to exceed the maximum pay scale for the vacant position.

Not all of the legal provisions that administer these types of appointments include identical language. This creates the potential for inconsistency, as well as potential abuse of the system with regard to the temporary nature of these appointments and the limits on payrates. The provisions should be amended to further emphasize that these types of appointments are 1) temporary and must require specialized skills; 2) members may only be permitted to exceed the 960 hours once; and 3) annuitant payrates are limited to the maximum published pay schedule for the vacant position.

Another provision of the PERL provides for permanent employment of a member retired for industrial or ordinary disability with a CalPERS employer under certain conditions. One of these conditions is that the sum of the member's monthly disability retirement pension and his or her monthly earnings cannot exceed the maximum monthly compensation currently paid in the position from which the member retired. In order to ensure that a disabled retired member does not exceed this limit, the PERL should be amended to clarify the member cannot be concurrently employed as a retired annuitant under a separate employment after retirement provision.

Accepting A Will Or Trust As Beneficiary Designation

Under existing law, CalPERS retirees or beneficiaries receiving a monthly allowance have the right to designate any beneficiary they choose, as long as their designation does not interfere with a spouse's community property rights. However, CalPERS must receive a properly completed beneficiary designation form to implement a beneficiary designation. If a beneficiary designation is not received, CalPERS relies on the beneficiary order outlined in statute to pay the member's benefits.

Many participants neglect to provide CalPERS with an up-to-date beneficiary designation form. Instead, they assume a will or trust will serve as a beneficiary designation. Upon the participant's death, CalPERS is frequently asked to accept a will or trust in lieu of a beneficiary designation form. When CalPERS is presented with a will or trust that specifically cites the retirement account or disinherits one or more persons who would otherwise be eligible by statute, staff can administratively accept the document as a "writing filed with the Board" and pay benefits to the participant's estate.

This proposal would allow CalPERS to accept a will or trust as a beneficiary designation if:

- The document specifically names the retirement account as an asset.
- The document specifically disinherits one or all persons who would otherwise be entitled to benefits provided by CalPERS.

The proposal would also provide that when such a will or trust serves as the beneficiary designation, it is deemed to designate the estate or trust as the member's beneficiary.

Death Benefit Payments to Public Administrators

Existing law provides for payment of lump sum death benefits to a member's designated beneficiary or, in the absence of a designated beneficiary, to survivors in the following order: spouse or registered domestic partner; children; parent; or siblings. If there is no designated beneficiary or survivor entitled to receive the lump sum death benefit, the benefit becomes payable to the member's estate. In some case, the Public Administrator may be authorized to dispose of an estate without probate.

A statutory change is needed to clarify that in the case of a small estate with a value of $30,000 or less, CalPERS may pay death benefits to a the Public Administrator without first requiring the Public Administrator to provide Letters of Administration.

The death benefits at issue are sometimes as low as $500, or consist of just the prorated allowance for the days the payee was living in the month of his or her death. In these situations, the death benefit is not substantial enough for the Public Administrator to justify incurring the expense of obtaining Letters of Administration.

This proposal would authorize CalPERS to pay lump sum death benefits to a Public Administrator when certain requirements are met and the estate of the member qualifies for summary disposition as a small estate.

“Payrate” for School Employees

Section 20636.1 was added to the Government Code in 2000 in an effort to clarify and standardize the reporting of compensation and service for school employees. It defines the terms “compensation earnable”, “payrate”, and “special compensation” as they relate to school employees.

When this section was added, the original intent was to mirror existing language in section 20636. Section 20636 includes, in the definition of “payrate” amounts deducted from a member’s salary for participation in a tax-deferred retirement plan, in a deferred compensation plan and in a flexible benefits program. This was the current practice at the time the language was drafted and remains so today.

At the time section 20636.1 was added, not all of the relevant language from section 20636 was included.

This proposal would add the relevant language to section 20636.1 to include under the definition of payrate for school members any amount deducted for:

- Participation in a deferred compensation plan.
- Payment for participation in a 401(k) plan.
- Payment into a qualified 401(a) plan.
- Participation in a flexible benefits program.

CalPERS compliance with the Federal HEART Act

The federal Heroes Earning Assistance and Relief Tax Act (HEART Act) was signed into law by President Bush in 2008 to provide tax and retirement advantages to military personnel and their families. Among other things, the HEART Act protects survivor benefits for employees who die during active military service. Specifically, when a member dies while performing qualified military service, the member’s survivors are entitled to any additional benefits that they would have received had the member died as an active employee.

Pension plans must be amended to comply with the HEART Act. In CalPERS' case, amendments to the PERL must be made by June 30, 2013. This proposal would add needed language to the PERL to comply with HEART Act requirements.

Align the Adjustment of Employer Contribution Rates to Current Practice

Current law requires as part of the annual budget process that the Governor include in his budget proposal the retirement contribution rates for liability for benefits on account of State employees, as established by the Board. The Legislature is then required to adopt the submitted rates and authorize the appropriation in the Budget Act.

Over the past six months, the State has negotiated and adopted Memoranda of Understanding with a majority of its bargaining units that have, among other things, increased normal retirement ages for new hires and increased employee retirement contribution rates.

In August, the Board implemented a policy change so that, to the extent consistent with the Board's legal and fiduciary responsibilities, changes in retirement benefits or member contribution rates are reflected in the employer contribution rates for the State plans immediately upon the effective date of the change or as soon thereafter as can be accomplished given the Board's meeting schedule, instead of at the beginning of the succeeding fiscal year.

It is recommended that Section 20814 be amended to align with the Board's current rate setting process and reflect the recently adopted Board policy.

Memorandum of Understanding Conformity

CalPERS provides retirement benefits and health benefits for State employees under the PERL and PEMHCA.

This year, several bargaining units reached contract agreements with the Department of Administration. The new contract agreements reduce pension benefits for new employees and establish pension contributions for current employees. The three bills signed into law that memorialize these agreements did not make all the amendments to the PERL necessary to ensure conformity.

This proposal would make changes to the PERL to assure conformity with the recent labor agreements.

Other Technical Changes

This proposal also makes other technical wording and grammatical corrections and corrects or deletes inaccurate or obsolete code section references.

V. STRATEGIC PLAN:

These proposals support Strategic Goal III to develop, design, and administer benefit programs and business processes that are innovative, effective, efficient, and valued by our members, employers, and stakeholders.

VI. RESULTS/COSTS:

Administrative Cost

While any changes that enhance the ability of staff to effectively administer CalPERS' benefit programs might result in minor administrative savings, staff have not identified any significant administrative costs or savings incurred as a result of these proposals.

Benefit Program Cost

The proposal to eliminate the crediting of interest for pre-retirement death benefits beyond the 6 percent annual crediting rate may result in an annual savings of between 5 and 6 million dollars.

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